

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Applications by Qwest Communications,)	
International Inc. for Authorization to)	CC Docket No. 02-314
Provide In-Region, InterLATA Services)	
in Colorado, Idaho, Iowa, Nebraska,)	
North Dakota, Montana, Utah, Washington)	
and Wyoming)	

REPLY COMMENTS OF COVAD COMMUNICATIONS COMPANY

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Introduction

In its previous filings in the Qwest ROC I and ROC II 271 proceedings, Covad has repeatedly attempted to bring to the Commission's attention the grave deficiencies in Qwest's evidentiary showing with respect to loop qualification information.¹ As incorporated in response to Qwest's latest round of 271 filings,² Covad's comments document extensively the manner in which Qwest's loop qualification OSS is insufficient to meet the needs of competitive entrants, and document extensively why Covad has every reason to believe that Qwest in fact has not made all of the loop information available to its personnel similarly available to competitors.³ In particular, Covad has shown that KPMG's testing of loop qualification on its face fails to satisfy the Commission's standards for incumbent provision of loop qualification information, and that Qwest previously provided access to MLT loop makeup information to its retail personnel that was not also made available to competitors.⁴ Covad has also explained why requiring Qwest to undergo an immediate audit of its loop information OSS and requiring Qwest to provide competitors with access to pre-order MLT testing are the only ways to cure the obvious deficiencies in Qwest's evidentiary showing with respect to its provision of loop qualification information to competitors.⁵ These infirmities, which

¹ See Covad Comments in WC Docket No. 02-148; Covad Reply Comments in WC Docket No. 02-148; Covad Comments in WC Docket No. 02-189; and Covad Reply Comments in WC Docket No. 02-189.

² See Covad Comments in WC Docket No. 02-314 at 2.

³ See, e.g., Covad Comments in WC Docket No. 02-189 at 23-38.

⁴ See, e.g., Covad Comments in WC Docket No. 02-189 at 28; see also WA 271 Workshop 4 Exh. 899 (JML-15 to Direct Testimony of Jean Liston) (last page shows "option" of providing a sales referral or a database update). In Arizona Colorado, Qwest introduced, but later withdrew, a days' earlier version of the LFACS update. See CO 271 Workshop Exh. 5 Qwest 61 (last page shows method to update LFACS is to call MegaBit retail personnel).

⁵ See, e.g., Covad Comments in WC Docket No. 02-189 at 23-38.

persist in Qwest's current round of re-filed 271 applications without any significant change, standing alone are sufficient to warrant a finding that Qwest has not complied with the checklist.

Since Covad's initial comments in this docket, AT&T has uncovered extremely alarming evidence that Qwest deliberately misled Commission staff about its MLT testing capabilities and processes.⁶ Specifically, AT&T provides extensive documentation of a visit by FCC staff to a Qwest facility in Omaha Nebraska in July, 2002, for which Qwest managers explicitly instructed employees to hide information about their performance of and capabilities for performing MLT testing from regulators. In fact, Qwest does nothing to rebut AT&T's evidence that Qwest did in fact deliberately hide evidence from the view of FCC staff about Qwest's performance of MLT testing. Qwest does nothing to rebut AT&T's evidence that a Qwest manager intentionally instructed employees in writing to hide evidence about Qwest's performance of MLT testing from FCC staff for the specific purpose of keeping them from requiring Qwest to provide such testing to competitors.⁷ Rather, Qwest admits that it engaged in such deceptions on multiple occasions.⁸ Qwest's hope is that it can cajole the Commission into dismissing its deceptions as merely "ill advised," a simple "lapse in judgement."⁹ But Qwest's response misses the point. On these occasions Qwest cavalierly and brazenly hid relevant evidence from federal regulators pertaining to issues clearly raised

⁶ See AT&T Comments in WC 02-314 at 54-57.

⁷ See Letter from R. Steven Davis, Qwest, to Marlene Dortch, FCC, dated October 21, 2002 (submitted in WC 02-314). ("*Qwest October 21 MLT ex parte*").

⁸ See *id.* at 4.

⁹ See *id.* at 5.

by commenting parties on the record. Such deceptions are hardly merely “ill advised.” Rather, they constitute a willful attempt to distort the fact-finding process of the Commission during a federal 271 proceeding. Indeed, what exactly is the purpose of Commission staff making a site visit to Qwest’s CLEC Coordination Center except to view Qwest’s wholesale provisioning processes undistorted? If Qwest can at will decide which facts it will present and which inconvenient facts it will choose to hide, how does this not subvert confidence in the Commission’s fact-finding process? How does this not subvert confidence in the evidence Qwest has brought forward throughout the 271 process? In this instance, a whistle-blower came forward to shed light on Qwest management’s policy of deception. So just what else is Qwest hiding? Qwest’s deceptions are hardly just “ill advised.” They are a gross, shameful policy of distorting the Commission’s deliberative process, so that Qwest can obtain its 271 authorization without having to deal with the inconvenient fact that it discriminates against competitors.

Covad’s previous filings illustrate such sufficiently serious deficiencies in Qwest’s evidentiary showing with respect to loop qualification information that the Commission can not reasonably grant the latest round of Qwest’s 271 filings. AT&T’s shocking evidence of Qwest’s bald deception of the Commission staff makes these deficiencies simply insurmountable. As Covad has already shown in its previous filings, the Commission can have no confidence, based on the evidence before it, that Qwest provides nondiscriminatory access to loop qualification information. In fact, based on such previous conduct as Qwest’s providing MLT results to its own retail personnel but not to competitors, the Commission has every reason to believe the opposite. The latest

evidence unearthed by AT&T regarding Qwest's demonstrated willingness to deceive regulators simply makes the doubts about Qwest's loop qualification processes insurmountable. The Commission must not allow these applications to pass.

I. Qwest's Unreliable, Discriminatory Loop Qualification Information

A. The Loop Qualification Database that Qwest Provides to CLECs Is So Unreliable That CLECs Lack a Meaningful Opportunity to Compete

Qwest's Raw Loop Data Tool ("RLDT"), which provides loop qualification/loop makeup information to CLECs, is seriously flawed. This is a point that Qwest – despite its advocacy in this proceeding – cannot dispute. In these reply comments, Covad presents the Commission with additional evidence about Qwest's region-wide loop qualification processes recently adduced over the course of hearings before the Minnesota PUC. In fact, Qwest itself has submitted evidence during the Minnesota 271 hearings regarding its region-wide RLDT systems acknowledging that the RLDT contains information that is far from perfect. During the hearings, extensive evidence was introduced into the record regarding the lack of reliability of the RLDT. Specifically, Covad demonstrated that, both historically and currently, Qwest's RLDT fails to provide accurate and reliable loop makeup information. For instance, Covad provided historical evidence, adduced through the Colorado xDSL FOC trial, that:

- ❖ Covad was unable to pre-qualify 70 orders because the RLDT either did not recognize or contain information for the end user's telephone number, or the RLDT did not recognize a direct match even after that address had been validated against Qwest's address validation data base;
- ❖ no distance was available for 14 orders;
- ❖ no MLT distance was provided on 27 orders;

- ❖ for 19 line shared orders, placed on Qwest's "jeopardy list" on May 7 and May 14, 2001, the RLDT indicated no bridge tap or load coil was present when, in fact, bridged tap and load coils were on the line; and
- ❖ 35% of the orders submitted resulted "in a no working telephone number response" that materially impeded Covad's ability to use the RLDT.¹⁰

Later, in response to Qwest claims of "evidentiary staleness" (rather than any truly responsive evaluation of the evidence), Covad provided additional evidence regarding inaccuracies in the RLDT. Specifically, Covad demonstrated that, during a sample six week time period, 44% of Covad's line shared loops were held for conditioning to remove load coils and bridged tap, even though the RLDT reflected the fact that no conditioning was required since the individual line shared loops that were pre-qualified appeared to be a "clean" loops (*i.e.*, loops without load coils or bridged tap).¹¹

Qwest challenged this evidence on the grounds that the RLDT would have been updated to reflect the removal of bridged tap and load coils, and that no such impediments would have been disclosed if any queries had been run after the order had completed.¹² Although Qwest acknowledged that some of the queried orders did in fact show the existence of bridged tap¹³, Qwest took the position that, despite

¹⁰ *Commission Investigation into Qwest's Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1, 2, 4, 5, 6, 11, 13 and 14*, Minnesota Public Utilities Commission, PUC Docket No. P-421/CI-01-1371, OAH Docket No. 7-2500-14486-2, Exh. 180, p. 30. ("Minnesota 271 Hearings").

¹¹ *See id.*, Exh. 182, p. 5.

¹² *See id.*, Exh. 184.

¹³ *Id.*, at second blue divider ("Those Designated As 'Yes'").

conditioning, bridged tap would show up in the RLDT because it is Qwest's policy only to remove "excess" bridged tap. Unfortunately for Qwest, its challenge to Covad's second set of evidence documenting the inaccuracies in the RLDT falls flat on its face.

As Covad witness Cutcher made abundantly clear, Qwest's practice with respect to the provisioning of Covad line shared loops is to dispatch a technician to remove any and all bridged tap on the line, regardless of whether the bridged tap length is excessive.¹⁴ That is, even though the line shared loop ordered by Covad could support ADSL service even with the existing bridged tap on it, Qwest will remove all bridged tap on every line shared loop order in which the pre-approved conditioning box is checked on the LSR¹⁵ – which is Covad's standard ordering practice.¹⁶ Consequently, if Qwest's RLDT is accurate and timely updated, which is the case according to Qwest, then every single order reflected in Exhibit 184 should be free of all bridged tap and load coil.

Cursory review of Qwest's Exhibit 184, however, shows that almost half the orders show the existence of bridged tap even though *no* bridged tap should be reflected anywhere in the RLDT information for any line shared loop ordered by Covad and filled by Qwest.¹⁷ Thus, Qwest Exhibit 184 in the Minnesota hearings demonstrates Covad's point precisely – that the RLDT is inaccurate and unreliable. Covad sets forth below the appropriate remedies to correct the deficiencies in Qwest's RLDT.

¹⁴ See *id.*, Trans., 10/9/02 (Cutcher), p. 33.

¹⁵ *Id.*

¹⁶ *Id.* Notably, despite the fact that Covad disclosed during cross-examination the name of the Qwest employee (Susan Earley) who confirmed what Covad's experience showed (that all BT was removed regardless of length), Qwest never bothered to contact that employee to rebut the clear implication of Covad's cross-examination. Trans., 10/9/02 (Pappas), p. 161.

¹⁷ See *id.*, Trans., 10/9/02 (Cutcher), pp. 34-35.

B. Qwest Should Take Action to Compensate for the Discriminatory Nature and Poor Quality of Its Loop Qualification Database

1. Qwest Should Provide CLECs Direct Access to LFACS and All Other Databases and Records That Contain Loop Makeup/Loop Qualification Information.

Qwest should compensate for the poor state of its loop qualification database by providing CLECs with direct access to the Loop Facility Assignment and Control System (“LFACS”) database as well as all other databases and records that contain loop makeup/loop qualification information. Qwest uses the LFACS database to manage its loop plant and to assign loop facilities. Qwest also uses other, unnamed databases to maintain loop makeup and loop qualification information necessary for the successful provisioning of its own retail loops. As such, critical loop qualification information necessary for the provisioning of UNE loops generally, and xDSL loops specifically, for wholesale competitors, like Covad, resides in all these databases. Providing CLECs direct access to these databases would be an efficient method of ensuring that the defects in the RLDT do not materially impede CLECs’ ability to compete.

There can be no doubt that LFACS provides vital loop makeup information. For instance, according to Qwest witness Brohl as well as extensive Qwest documentation, Qwest engineers regularly make use of LFACS¹⁸ to ascertain the existence and location of bridged tap and load coil – two loop conditions that are critical to the determination of whether a loop can support xDSL services. As AT&T witness Wilson made clear, just as this information is useful to Qwest engineers, it would be equally useful to CLEC

¹⁸ See *id.*, Trans., 9/10/02 (Brohl), p. 168; Exh. 55 (“Qwest engineers primarily utilize LFACS to determine where the bridged tap and/or load coils are located”).

engineers¹⁹, like Covad's, that have had significant input into the Covad line shared loop and stand alone loop prequalification tools. Yet, Qwest refuses to provide this access.

Similarly, Qwest maintains other databases that contain loop makeup information and, more critically, *corrected* loop makeup information that are available to its retail personnel, but not to Qwest's wholesale competitors. Specifically, during the hearing, Qwest witness Pappas confirmed that the Loop Provisioning Center ("LPC") is responsible for updating LFACS, which ostensibly feeds both the wholesale and retail loop qualification databases.²⁰ Mr. Pappas also ostensibly confirmed that, when an update is made by a technician when he or she discovers that the LFACS records are incorrect (as a result of unsuccessful provisioning or necessity to repair something that was not reflected in LFACS) that technician fills out the "Technician Facilities Form" with the corrected loop makeup information, which is then sent to the LPC for updating into LFACS.²¹

Of course, Qwest's own, undisputed documentation shows that Qwest has another, entirely separate process, for updating loop makeup information that apparently is provided only for, and to provision, Qwest retail orders. Exhibit 28, which was revised as recently as May 28, 2002 with an effective date of June 3, 2002, shows that Qwest technicians dispatched to either provision or repair Qwest retail DSL loops separate process from the Technician Facilities Form.²² These technicians send their form *not* to the LPC, which is the only group, according to Mr. Pappas, with responsibility for

¹⁹ See *id.*, Trans., 9/12/02 (Wilson), p. 162.

²⁰ See *id.*, Trans., 9/6/02 (Pappas), p. 167.

²¹ See *id.*, Trans., 10/9/02 (Pappas), pp. 175-76.

²² See *id.*, Exh. 28, pp. 2-8.

updating LFACS,²³ but instead to the Load Resource and Allocation Center (“LRAC”),²⁴ which serves only the “administrative” function of flowing work to Qwest technicians²⁵ and supposedly has no responsibility for updating LFACS.²⁶

Moreover, the information that is contained on the feedback form is directly relevant to whether a loop can support xDSL services, since it allows the update of several categories of loop makeup information. Thus, there is currently and has been historically, a separate repository for loop qual information that is maintained by and for the benefit of Qwest retail and to which CLECs have never been provided access in any form.

It is equally clear that there are databases or records that contain critical loop makeup information that are regularly and directly utilized by Qwest, but which are not accessible in any fashion by CLECs. For instance, Qwest engineers not only have direct access to LFACS, but also have direct access to other databases and records that contain loop makeup information, including facilities records separate from LFACS.²⁷ CLECs have no direct access to these records or databases, since they are limited to regular and real time access just to the loop qual database that underlies the RLDT.

The nagging suspicion that Qwest retail personnel have direct access to LFACS and other databases containing better, more accurate loop qual information than that

²³ See *id.*, Trans., 9/6/02 (Pappas), p. 167.

²⁴ See *id.*, Ex. 28.

²⁵ See *id.*, Trans., 9/6/02 (Pappas), p. 168.

²⁶ See *id.*, Trans., 9/6/02 (Pappas), pp. 167-68.

²⁷ See *id.*, Exh. 82, pp. 14-15.

returned by the RLDT is well-founded in the record before the ALJs and the Minnesota Public Utilities Commission. For instance:

(1) Qwest witness Brohl can provide an example of loop qualification information that shows, when using the unassigned by address query, 26 spare facilities going to a particular residence,²⁸ even though the RLDT returns information on only 24 spare loops going to any particular address when the unassigned by address query is used,²⁹

(2) Qwest provisioning personnel can somehow access information that will disclose whether loops have been statused incorrectly in LFACS or not³⁰, all without having to dispatch a technician,³¹

Even more egregiously, it is clear that corrected loop qualification information, ascertained while provisioning *CLEC* loops, is generated and maintained somewhere within Qwest, but is never provided to CLECs through loop qualification databases or LFACS updates. As is set out in AT&T's comments in this docket, former Qwest employee Edward Stemple has stated that Qwest employees were instructed not to perform MLTs during visits to the QCCC by FCC staff in July, 2002, even though Qwest employees at the QCCC were previously instructed to run an MLT on each line that was

²⁸ See *id.*, Exh. 49, Attachment BJB-LoopQual-12, p. 1.

²⁹ See *id.*, Trans., 9/10/02 (Brohl), p. 103; Exh. 49, Exh. BJB-Loop Qual-2, p. 44. Notably, while the RLDT can provide up to 48 responses regarding facility information if the telephone number query is used, that particular capability is not relevant to Ms. Brohl's example at Exh. 49 BJB-LoopQual-12, pp. 1-2 since she used the unassigned by address query and not the telephone number query.

³⁰ See *id.*, Exh. 18, Exh. JML-Loop-13, pp. 1-2, Steps 4 ("Investigate any spare/CT/CF/PCF pairs for status problems. This will discover pairs that may be statused incorrectly within LFACS ... Investigate any defective pairs status "Working." If the cable pairs are not "working" remove the defective status and use the pair for the Service Request.")

³¹ See *id.*, Exh. 19, DP-Loop-22, pp. 4-5 (Q (Izon): Is that physical check part of the 11-step process? A (Liston): No, the physical check is not part of the 11-step process. . . [Steese: Since you and others have negotiated the 72-hour FOC, we have done other things to improve process that we believe will make the physical checks not necessary A reason for this is if you do that physical check, it requires a double dispatch for us ... if that's not necessary and that one additional step does not improve any of our – the information you are getting and the time frames you are getting it in, then Qwest would think that would be unnecessary.").

to be "cut over" from Qwest to a CLEC. Moreover, Qwest employees at the QCCC were instructed not pull up the MLT screen on their computers, or to raise the issue of MLT testing, during the FCC visits.

Following the FCC staff visit, Qwest employees received an email which confirmed that Qwest had taken actions to "diminish the visibility to MLT during these visits for the sole purpose of protecting access to our legacy systems." In her email message directed to the QCCC organization, QCCC Director of Operations Mary Pat Chesheir stated:

I would like to clarify an issue around the MLT testing and our FCC visit. We have made an effort to diminish the visibility to MLT during these visits for the sole purpose of protecting access to our legacy systems. Since we started 271 efforts, CLECs have been very vocal about us providing them access into our systems, processes, CO's, data analysis, etc. Some of it we have been mandated to provide as a result of the Telecommunications act [sic] and the contracts we have with the CLECs.

We have taken a strong stance that our legacy systems are proprietary and allowing competitors access to them could be detrimental to our business. To date we have been successful in winning this argument.

CLECs have specifically asked for access to MLT. We believe this is a part of our legacy system we want to keep proprietary, As a result, we don't want to bring attention to it in front of the FCC as they may have a tendency to respond to CLEC requests in a manner which may be unfavorable to us.

The MLT test is critical to our success in providing quality service to our CLEC customers. The work you do in performing the MLT test is extremely important and the internal process focus and results are highly visible to the Network organization.

Hope this eliminates any confusion.

(E-mail message from Mary Pat Cheshier to Marsha Smith dated July 25, 2002, Attachment 1 to Stemple Declaration, emphasis added.)

In a letter to the FCC dated October 21, 2002, Qwest Senior Vice-President Steve Davis took issue with the Stemple Declaration, but he admits that: 1) Qwest performs MLTs on every unbundled loop ordered by a CLEC prior to converting the loop to the CLEC; 2) Qwest performs the MLTs on CLEC loops to ensure the “quality” of the loop; 3) Qwest does not provide the MLT results to the CLEC or load them into the Loop Qualification Database or LFACs, but rather loads the results into a database that only Qwest can access; and 4) prior to the FCC visits Qwest removed references to MLT which had been posted in on bulletin boards in the QCCC. Davis also claims that the removal of the posting from the bulletin boards was taken because a Senior Director of Qwest's 271 effort, who had extensive, visible and long-term responsibility for the ROC OSS tests as well as significant involvement with substantive aspects of Qwest's 271 efforts, "did not want to discuss unrelated technical and policy issues regarding pre-order MLT that she was not prepared to address that day." (*See* letter of R. Steven Davis to FCC dated October 21, 2002, at 4.)

The Stemple Declaration clearly exposes the fact that MLT is a necessary and useful tool for determining the quality of unbundled loops provided to CLECs. Plainly, the Declaration and associated documents possess probative value concerning the usefulness of MLTs, and the fact that Qwest is maintaining databases of useful loop quality information generated by MLTs on CLEC loops that is not in LFACs or the LQDB and that is not accessible by CLECs, thereby undermining the credibility of

Qwest's arguments against allowing CLECs access to MLTs and all loop qualification information that is accessible by any Qwest employee.

Despite the demonstrable value and regular use by Qwest employees of all of this loop information, Qwest has steadfastly refused to provide direct access to the LFACS database or any access at all to these other databases, despite its indisputably clear legal obligation to make available to CLECs all loop qualification information anywhere in its possession or to which any of its personnel (and not just retail ordering personnel) have access.³² Qwest instead has proposed that CLECs rely upon the currently available loop qualification tools that Covad shown above to be unreliable and which clearly do not contain all the loop qualification information generated and maintained by Qwest.³³ That is no solution to the problem. The Commission should order Qwest, consistent with its parity obligations under the Act as well as the access obligations imposed by the *UNE Remand Order*, and require Qwest to provide CLECs with direct access to the LFACS and all other databases in which loop qual information resides.

2. Qwest Should Provide Mechanized Loop Testing on a Pre-Order and Pre-Delivery Basis for all Switch-Based Loops.

There is another simple remedy to Qwest's inability or refusal to provide accurate and reliable loop qualification information – require Qwest to provide CLECs with pre-order and pre-delivery MLT results for line shared loops.

³² See 47 C.F.R. § 51.319(g) (“An incumbent LEC, as part of its duty to provide access to the pre-ordering function, must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC.”); *Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, at ¶ 427 (rel. November 5, 1999) (“*UNE Remand Order*”).

³³ See Exh. 180, p. 33.

a. Pre-Order MLT

As an initial matter, the Commission should be clear that there is absolutely no technical impediment to the use of an MLT on a pre-order, order, provisioning/pre-delivery, or maintenance and repair basis.³⁴ Consequently, the questions that are determinative of whether Qwest should be required to provide CLECs with access to pre-order and pre-delivery MLT are whether (1) such access facilitates a meaningful opportunity to compete with Qwest; and (2) whether other legal requirements compel the conclusion that Qwest should be required to provide access to a pre-order or pre-delivery MLT. With the record before them, the ALJs and the Commission should find that the answer to both questions is a resounding “yes.” Qwest should be ordered to provide CLECs with access to MLT on a pre-order and a pre-delivery basis.

It is widely known that the technical parameters and requirements surrounding the provision of xDSL loops are more onerous than the technical requirements for the provision of voice service. The MLT test provides a simple, straightforward pre-order mechanism by which to get around the technical sensitivities of DSL loops and the inaccuracies in the Qwest RLDT. A pre-order MLT can be remotely triggered and utilizes testing equipment already attached to the Qwest switches. The MLT provides real-time loop makeup information³⁵ as well as information regarding whether the loop is capable, *at the time a CLEC anticipates ordering that loop*, of supporting xDSL service. If Qwest were to provide pre-order MLT to CLECs, it would provide far fewer bad or incorrectly provisioned line shared loops.

³⁴ *Minnesota 271 Hearings*, Trans., 9/6/02 (Pappas), pp. 141-142.

The advantages that the pre-order MLT provides are not just one-way. Rather, Qwest also will benefit, in a very real manner, from pre-order CLEC access to MLT. Through a pre-order MLT, a CLEC will know most of the attributes of the loop. If the information shows the loop cannot support xDSL service, then the CLEC will not submit that order. This will save Qwest money because it will not incur any administrative costs in creating a service order and flowing it through its system. Qwest will save additional money because it will not actually undertake any work, such as a truck roll or the dispatch of a CO technician to provision a loop because the order will not be placed.

Qwest has asserted time and again that the loop qual information it provides to CLECs is the same as that it provides to itself. Qwest further asserts, time and again, that that loop qual information is accurate and therefore that a pre-order MLT is unnecessary. Yet, those assertions -- which are Qwest's bread and butter when arguing loop qual issues, including pre-order MLT, in the regulatory arena -- are entirely inconsistent with its own provisioning practices. If Qwest's loop qualification information is as reliable as it represents, there would be neither the need nor the opportunity to identify, define and circulate a process (which Qwest presumably trains its technicians on) for the MLT process it reveals for the first time in its *ex parte* letter to the Commission.³⁵ Qwest's representations and its actual provisioning practices thus stand in stark contrast with one another.

On the wholesale side, Qwest has responded to the CLECs' requests for access to MLT for purposes of confirming loop qualification information with a litany of vague

³⁵ An MLT provides reliable and, more importantly, real time information regarding the *current* makeup of the loop, including almost one hundred data points, such as electrical impedance, shorts, grounds, foreign voltage, etc.

³⁶ See Qwest October 21 MLT *ex parte*.

arguments. Among other things, Qwest witness Dennis Pappas has asserted that MLT is "primarily a repair test" and that "is not meant to be, nor was it ever designed to be used as a qualification tool for loops." The Stemple Declaration, Cheshier e-mail and Davis letter, however, clearly demonstrate that (1) Qwest uniformly performs MLTs on CLEC-requested loops; (2) the usefulness, design and purpose of MLT's is in no way limited to repair situations but is designed to ensure the accuracy and reliability of loop qualification information to ensure quality loop provisioning; and (3) Qwest's testimony concerning access to MLT for loop qualification purposes is not credible and is motivated by a corporate policy to protect Qwest's back-office databases from disclosure to and access by CLECs.

Critically, the information adduced during the Minnesota hearings and, more recently disclosed by Qwest when its duplicitousness was uncovered, confirms the concerns raised by Covad regarding Qwest use of MLT and how that information has been and is used by Qwest in connection with loop qualification information. As shown in Covad's previous filings, the MLT captures over one hundred data points,³⁷ while Qwest's database purports to provide only MLT loop lengths.³⁸ Ms. Cutcher also opined that Qwest regularly runs the MLT, but updates only the approximated MLT distance in the RLDT:

When the Loop Qualification database was initially loaded with loop information from LFACS, some of the loops *did not contain loop length*, showing missing segments. As a result, Qwest (then US WEST) performed some MLT tests to *extract MLT distance data*, and together with other distance database record information, obtained the estimated loop length for the missing segments and

³⁷ See Covad Comments in WC 02-189 at 27.

³⁸ And even that information is often inaccurate.

*algorithmically populated the appropriate data for those segments distances for which it applied in the loop Qualification database.*³⁹

Qwest hoards the information generated by the MLT tests, by referring it only to a “dedicated engineering team for manual handling” rather than using the information generated to correct any inaccuracies or update the information contained in the RLDT.⁴⁰ What Covad does not know, and what Qwest has refused to disclose, is what this “dedicated team” has done with the remaining in excess of one hundred data points.

Qwest dismisses these concerns as unfounded conjecture. Now, of course, the Stemple declaration makes clear that such concerns were not misplaced at all. Rather, Mr. Stemple’s declaration confirms the factual validity of these concerns regarding Qwest’s use of MLT and the importance it bears on confirming the accuracy and reliability of Qwest’s loop qualification information.

There is simply no other way, short of a pre-order MLT, to determine whether the loop over which service actually will be provided is capable of supporting xDSL services at the time the CLEC seeks to place an order. While Qwest will be using a router test for the provisioning of CLEC line shared loops, the router test will only confirm continuity and correct provisioning within the central office; the router test will not be used by Qwest to confirm loop characteristics in the outside plant. The MLT, by contrast, will provide all sorts of information regarding loop characteristics in the outside plant, such as loop length grounds, opens, foreign voltage, AC and DC signatures in KOhms, and

³⁹ See *Minnesota 271 Hearings* Exh. 182, pp. 11-12.

⁴⁰ Qwest July 10, 2002 ex parte, p. 26.

capacity and longitudinal balances.⁴¹ Additionally, an MLT also generates information regarding whether:

- (1) the entire line is capable of supporting ADSL (Ver OA);
- (2) there are opens on the line in the outside plant (Ver 18);
- (3) there is digital loop carrier all the way to the customer drop (Ver 1F);
- (4) the RT cards at the customer premise are bad (Ver 1R);
- (5) there are bad DSL facility utilizing UDC (Ver 2R);
- (6) the line records accurately reflect the services currently on the line (Ver 92);
- (7) there is poor longitudinal and capacitive balance (VER 93);
- (8) for multiple faults found on the line, a summary of those faults (Ver 99); and
- (9) whether the line is out of service for purposes of DSL service (Ver IO).⁴²

All of this information would be helpful to Covad in determining in advance whether a particular loop is capable of supporting xDSL service at the time it is ordered.

It is important to note at this point that, of all the loop types offered by Qwest to CLECs, only line shared loops do not come with any kind of guarantee as to the technical specifications. For example, according to Qwest (as well as its on-line product catalog or “PCAT”), 2 wire non-loaded and ISDN loops are guaranteed to meet specified technical parameters at the time of delivery. Similarly, per the PCAT, both distribution subloops and line shared distribution subloops are guaranteed to meet specified technical

⁴¹ See *Minnesota 271 Hearings* Exh. 19, DP-Loop-15, p. 4; Trans., 9/6/02 (Pappas), p. 143.

⁴² See *id.*, Exh. 186 (Ver Codes OA, 18, 1F, 1R, 2R, 92, 93, 99 and IO).

parameters at the time delivery. It is only line shared loops for which Qwest refuses to provide any kind of technical guarantee, and instead will only affirm that line shared loops have a limited amount of bridged tap and no load coils. This is particularly troubling since Qwest's retail DSL product is line shared and Covad, generally speaking, is Qwest's only significant competitor in the line shared DSL space.

Qwest may resort to the argument that any MLT information that CLECs might want or find useful on a pre-order basis is contained in the RLDT. That is not so. The record here has firmly established first, that there is a universe of information that can be generated by an MLT and, second, that Qwest itself has a variety of other sources of loop quality information, including that generated by MLTs. Qwest, however, has only populated the RLDT with MLT length information. Even then, the MLT information contained in the RLDT is highly suspect. The RLDT MLT loop length information is just an estimate derived from running one MLT on a single loop in a carrier serving area ("CSA"). The MLT distance extracted for that one loop is then used to populate the loop length for every other loop that serves the same CSA. Thus, the MLT distance information contained in the RLDT is not generated for each loop and thus does not have even an approximation of reliability.

The only apparent objection Qwest lodges against a pre-order MLT is that it is "invasive" – that is, an MLT run while the customer is on the telephone might disrupt that call. That concern is immaterial and is no impediment to a pre-order MLT. First, the MLT has the capability of determining whether the line is being used at the time of testing and thus testing can be scheduled around times of use. Second, the MLT takes only 10-20 seconds, so the duration of the disruption is minimal. Third, Covad will only

run a pre-order MLT on customers who have sought service from Covad; and can run a pre-order MLT after hours in order to ensure there is no service disruption.

b. Pre-Delivery MLT

The Commission likewise should order Qwest to provide CLECs with access to pre-delivery MLTs. Qwest is obligated, by law, to provision good loops. As Qwest admitted during the Minnesota hearings, however, currently Qwest performs no testing on CLEC line shared loops prior to loop delivery to ensure that a “good” loop – one that is capable of supporting a line shared ADSL service – is actually turned over to the CLEC.⁴³ This lack of testing stands in marked contrast to Qwest’s provisioning practices for stand alone xDSL loops (like 2 wire non-loaded loops over which SDSL is provided), where Qwest commits to performance testing on all stand alone xDSL loops prior to delivery to ensure that loops delivered are “good” loops capable of supporting SDSL service.⁴⁴

Qwest’s failure to test switch-based loops necessarily results in a constant and ongoing violations of its obligations under controlling law. As Qwest’s witness made clear in a regulatory proceeding in another state (Utah), however, there is a simple solution to the lack of testing issue -- a pre-delivery MLT. An MLT run on CLEC line shared, switch-based loops on a pre-delivery basis serves the same functional purposes as the performance testing on stand alone loops.⁴⁵ That is, the pre-delivery MLT can ensure that a good loop will be turned over to the CLEC.⁴⁶ Thus, whether required by parity or

⁴³ See *id.*, Trans., 9/6/02 (Pappas), p. 146.

⁴⁴ See *id.*, Trans., 9/6/02 (Pappas), p. 144.

⁴⁵ *Id.*

⁴⁶ See *id.*, Exh. 19, DP-Loop-15, pp. 4-6.

its obligation to provide good loops to CLECs, Qwest should be required to provide CLECs with a pre-delivery MLT.

As discussed at length above, Qwest has failed to demonstrate that it currently provides competitors with non-discriminatory access to loop makeup information or that it treats competitors in the same fashion as it treats itself when provisioning switch-based loops. In light of Qwest's failure to meet its evidentiary burden, and its likely failure in fact to meet its ILEC obligations to provide nondiscriminatory access to loop makeup information, Qwest should be required to provide pre-order and pre-delivery MLT on all switch-based loops before its application for Section 271 relief is granted.

3. There Needs to be a Proper Audit of Qwest's Databases Containing Loop Qualification Information

Historically, "because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to 'pre-qualify' a loop by accessing basic loop make-up information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service."⁴⁷ Recognizing the critical role that "pre-qualification" plays in facilitating CLEC entry into an incumbent's local markets, the FCC requires BOCs to show as part of their *prima facie* case for Section 271 authority that they meet the ILEC obligation to provide CLECs with nondiscriminatory access to meaningful loop makeup information:

⁴⁷ See *Application By Bell Atlantic New York For Authorization Under Section 271 Of The Communications Act To Provide In-Region, InterLATA Service In The State Of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404, at ¶ 140 (rel. December 22, 1999) ("*Verizon New York 271 Order*").

Whether a prospective customer can be provided a particular advanced service often depends upon the carrier having access to detailed information about available loops, including the actual loop length and the presence of bridged taps, load coils, and digital loop carrier equipment. As the Commission previously has explained, a BOC's duty to provide nondiscriminatory access to OSS extends beyond the interface components to encompass all of the processes and databases used by the BOC in providing services to itself and its customers ... If new entrants are to have a meaningful opportunity to compete, they must be able to determine during the pre-ordering process as quickly and efficiently as can the incumbent, whether or not a loop is capable of supporting xDSL-based services.⁴⁸

With Test 12.7, KPMG affirmed merely that nine tasks associated with loop makeup information were the same for wholesale and retail customers:

- The same end user information is required in order to submit wholesale and retail queries;
- The process for submitting a loop qualification query is consistent for and actually used by wholesale and retail customers;
- Processes for addressing questionable loop makeup information are defined;
- The internal process flow for loop qualification queries is consistent for wholesale and retail;
- Contact information for questions regarding loop qualification information is readily available for wholesale and retail customers;
- Wholesale and retail customers receive completion notices and can access status of query via the interface submitted;
- Systems and processes are in place to allow both wholesale and retail to query using the customer address;
- Loop qualification response types are consistent between wholesale and retail; and
- Escalation process is consistent for wholesale and retail.

⁴⁸ *Verizon New York 271 Order*, ¶ 141.

The limited scope of KPMG’s inquiry does nothing to ensure that Covad is able to access all loop information that it needs in order to market services. By its very terms, Test 12.7 indicates that at no point did KPMG look at whether CLECs have access to all loop qualification information resident anywhere in Qwest’s loop qualification or other back office databases (such as engineering records). In other words, KPMG’s testing fails to show that Qwest makes available to CLECs all loop qualification information that it is legally obligated to provide.

The FCC stated several years ago in the *UNE Remand Order* that ILECs must “provide competitors with access to all of the same detailed information about the loop available to [itself], and in the same time frame as any of [Qwest's] personnel could obtain it, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install.”⁴⁹ Further clarifying that obligation in its *Verizon Massachusetts 271 Order*, the FCC stated that the relevant inquiry under the *UNE Remand Order* is not whether an ILEC’s “retail arm or advanced services affiliate has access to such underlying information but whether such information exists anywhere in [the ILEC’s] back office and can be accessed by any of [the ILEC’s] personnel.”⁵⁰ In that order, the Commission also reaffirmed its long-standing precedent that “The BOC at all times bears the burden of proof of compliance

⁴⁹ *Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, at ¶ 427 (rel. November 5, 1999) (“*UNE Remand Order*”).

⁵⁰ *In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Mem. Op. and Order, CC Docket No. 01-8, FCC 01-130, 41454 & 58, at ¶ 430 (Apr. 16, 2001) (“*Verizon Massachusetts 271 Order*”).

with section 271.”⁵¹ It was precisely because Verizon could not meet its burden of proof of showing non-discriminatory access to loop makeup information that Verizon withdrew its first Massachusetts 271 application, and subsequently refiled after creating a pre-order process for access to its LFACS database.⁵² Verizon’s first, failed attempt at 271 entry in Massachusetts ran afoul of the same requirement that KPMG’s testing ignores and that Qwest’s application seeks to sidestep here: that the BOC prove it provides competitors access to loop makeup information under the standard established by the *UNE Remand Order*, namely in the same time and manner it is available to any of its own personnel.

The importance of this obligation cannot be overemphasized. If the Commission were to permit Qwest to simply provide Covad and other competing carriers only such loop information as Qwest needed for its own retail service offerings, the Commission would be endorsing Qwest’s efforts to stifle innovative broadband offerings. Qwest has both the ability and the incentive to ensure that competing carriers are unable to offer consumers any broadband products that are more innovative than Qwest’s own retail products. The easiest way to accomplish that goal is to deny competitors access to the loop makeup information they need to determine customer eligibility for such services. If such loop makeup information is unavailable, competing carriers will be able only to determine whether the customer could purchase service that matches the parameters of Qwest’s own retail offerings. Such limits on competition are contrary to the goals of the Act.

Qwest has put forth simply no evidence to demonstrate that competitors receive access to all of the loop makeup information available to Qwest’s personnel in the same

⁵¹ See *id.* at ¶ 11.

⁵² See *id.* at ¶ 57.

time and manner. The appropriate response to these defects in Qwest's evidentiary showing is an immediate, comprehensive audit of Qwest's OSS systems, databases and processes that relate to *all* loop makeup information. Qwest's behavior alone, namely permitting outside plant personnel to "update" loop makeup information to groups with no obligation to update LFACS and make such updates available to CLECs, demonstrates the need for such an audit.⁵³ Auditing Qwest's OSS before approving its application for Section 271 relief is the only manner in which to ensure that Qwest meets its obligations to provide competitors with non-discriminatory access to the loop makeup information available to any of its personnel in both its retail and back office systems.

C. Qwest Should Desist from Its Anti-Competitive Practices Prior to Receiving Section 271 Authorization

Potentially even more egregious than its failure to update loop qual information for CLECs is the fact that Qwest uses its discriminatory loop qual update practices to unfairly and improperly lock in customers for other services rather than correcting the information so that CLECs can vie for that customer's order to provide xDSL services if Qwest cannot or will not provide the DSL service requested. As Exhibits 28 and 57 in the Minnesota 271 hearings make clear, immediately upon learning of any inaccuracy in the loop qual information, the **LRAC notifies Qwest retail personnel of Qwest's supposed inability⁵⁴ to offer DSL so that the Qwest retail personnel can lock the end user in with narrowband or other internet access services⁵⁵** thereby precluding any

⁵³ Exh. 182, p. 31.

⁵⁴ Since Qwest will not condition loops, it is entirely possible that a CLEC can offer DSL service to an end user customer since CLECs have the right and ability to order conditioning on a loop in order to provide xDSL service.

⁵⁵ See *Minnesota 271 Hearings* Exh. 28, p. 3.

attempt by CLECs to compete for that customer's business. Because of the obvious discriminatory impact on a CLEC's ability to compete with Qwest because Qwest uses database updates to directly facilitate alternative retail sales, Qwest should be ordered to revise its processes so that all loop qual or loop makeup updates go only to the databases and not to Qwest's retail personnel.

Conclusion

For the reasons stated herein and in Covad's previous filings,⁵⁶ the Commission should reject the applications of Qwest for authority to provide in-region, interLATA services in Colorado, Idaho, Iowa, Nebraska, North Dakota, Montana, Utah, Washington and Wyoming. Additionally, because of their grievous nature, Covad submits that Qwest's deliberate deceptions of Commission staff detailed on the record should also be immediately referred to the Enforcement Bureau for further investigation and enforcement action.

Respectfully submitted,

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⁵⁶ See Covad Comments in WC Docket No. 02-148; Covad Reply Comments in WC Docket No. 02-148; Covad Comments in WC Docket No. 02-189; and Covad Reply Comments in WC Docket No. 02-189.

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